

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE RICHARD M. OSBORNE  
*Debtor*

CASE No. 17-17361  
CHAPTER 11  
JUDGE ARTHUR I. HARRIS

**RESPONSE TO DIANE OSBORNE’S MOTION FOR ALLOWANCE AND IMMEDIATE PAYMENT OF  
ADMINISTRATIVE EXPENSE CLAIM PURSUANT TO 11 U.S.C. § 507(A)(1)**

Richard M. Osborne, Debtor in Possession (“Debtor”) responds to Diane Osborne’s Motion for Allowance and Immediate Payment of Administrative Expense Claim Pursuant to 11 U.S.C. § 507(a)(1) [Doc. 236] (“Movant” and “Motion”) and requests that the Court deny or set an evidentiary hearing on the same.

1. Movant is the Debtors former wife, and the Debtor acknowledges that he owes the Movant \$10,000 per month for a domestic support obligation pursuant to a property settlement and divorce decree.
2. However the Motion conflates the priority given to domestic support obligations in 11 U.S.C. §507(a)(1) and administrative claims that are governed by 11 U.S.C. §503.
3. Section 507(a)(1) provides in pertinent part:

(a)The following expenses and claims have priority in the following order:

(1) First: (A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, ....

This subsection refers only to domestic support obligations owed “as of the date of filing of the petition” that “are owed to or recoverable by” Movant. Movant seeks payment owed to her *after* the filing of the petition. The general rule is that all creditors in bankruptcy are to be treated equally; therefore the priorities in Section 507 are to be narrowly construed. *In re Birmingham-Nashville Express, Inc.* 224 F.3d 511, 515 (6<sup>th</sup> Cir 2000). Therefore the amounts

demanded by Movant are not entitled to priority under Section 507(a)(1), although the amounts owed as of the petition date to Movant are so entitled.

4. The amount sought in the Motion is not an administrative expense allowable under Section 503(b). Movant has the burden of establishing that she is entitled to payment of an administrative expense. E.g., *In re Merry-Go-Round Enters.* 180 F.3d 149 (4<sup>th</sup> Cir. 1999). None of the specific subsections of Section 503(b) apply to domestic support obligations, and Subsection (b)(1)(A) only refers to the “actual, necessary costs and expenses of preserving the estate.” The domestic support obligations owed Movant do not fit into that category and are therefore not administrative expenses.

5. Even if the Movant had an administrative expense, it is not entitled to immediate payment. Movant cites the requirement for confirmation of a plan that administrative expenses be paid in full on confirmation “unless otherwise agreed” with the holder of the administrative expense claim. 11 U.S.C. §1129(a)(9)(A). However 507(a)(1) claims are treated differently:

(B)with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, each holder of a claim of such class will receive—

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim

6. Under this subsection a class of claims must first reject the plan; accordingly the cases cited by the Movant are inapplicable as this subsection requires that the claims first vote on the plan, unlike administrative expenses that must be paid in full.

7. Finally the cases cited by the Movant as allowing immediate payment of administrative expenses require that the Movant show “(a)[the degree or lack of] prejudice to the debtor; (b) hardship to claimant; and (c) potential detriment to other creditors. In *In re Garden Ridge Corp.*,

323 B.R. 136 (Bankr. D. Del. 2005).” Movant has provided no information on her expenses or her other resources available to pay those expenses, and while the estate does have funds it has substantial liabilities to other creditors, some of whom have secured claims (including Movant). Movant has therefore failed to show that any administrative claim is entitled to immediate payment.

Therefore, the Debtor respectfully requests that this Court deny the Motion, or set an evidentiary hearing on the same.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Response was electronically transmitted on or about the date filed via the Court’s CM/ECF system to the following who are listed on the Court’s Electronic Mail Notice list or was served by U.S. mail, postage prepaid, or certified mail on the persons below as indicated below.

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